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No. 02-466

IN THE

Supreme Court of the United States

CASINO ASSOCIATION OF LOUISIANA, INC.,
Petitioner,

v.

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, GOVERNOR, AND THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL,
Respondent.

On Petition for a Writ of Certiorari to the Louisiana Supreme Court

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE DKT LIBERTY PROJECT IN SUPPORT OF PETITIONER

JULIA M. CARPENTER *
IMAD D. ABYAD
JENNER & BLOCK, LLC
601 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 639-6000

Counsel for *Amicus Curiae*
The DKT Liberty Project

* Counsel of Record

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MOTION OF THE DKT LIBERTY PROJECT FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER[1]

The DKT Liberty Project, through its undersigned counsel, respectfully moves this Court, pursuant to Rule 37.2(b) of the Rules of the Supreme Court, for leave to file the accompanying brief *amicus curiae* in support of

[1] Pursuant to Supreme Court Rule 37.6, none of the parties authored the brief *amicus curiae* in whole or in part and no one other than *amicus* or its counsel contributed money or services to the preparation or submission of the brief.

Petitioner, Casino Association of Louisiana, Inc. Petitioner has consented to the submission of this brief, and its letter of consent has been filed with the Clerk of this Court. Counsel for Respondent, State of Louisiana, has withheld consent to the filing of the brief.

The DKT Liberty Project was founded in 1997 to defend individual liberties against encroachment by all levels of government. This not-for-profit organization advocates vigilance over regulation of all kinds, especially restrictions of individual civil liberties that threaten the reservation of power to the citizenry that underlies our constitutional system. The DKT Liberty Project is particularly involved in defending the right to freedom of speech, one of the most profound individual liberties.

The Louisiana statute at issue here bans all campaign contributions by certain persons connected with the gambling industry. Although the ostensible goal is to avoid the political corruption of undue influence, the Statute targets only one industry – the gambling industry. And it targets that industry despite the lack of any evidence that the gambling industry has exercised or will exercise any undue influence on the Louisiana legislature. Prophylactic bans on the speech of one disfavored industry cannot withstand strict scrutiny. And if gambling voices are allowed to be silenced here, other voices will surely be silenced as well in other places. The current explosion in experiments with campaign finance reform at both the state and federal level must be carefully evaluated to ensure that the fundamental right in a democracy to choose to support and affiliate oneself with a candidate is not destroyed. Because of The DKT Liberty Project's strong interest in free speech and in the participation of many voices in government, it is well-

situated to provide this Court with additional insight into the issues presented in this case.

For the foregoing reasons, The DKT Liberty Project respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of Petitioner.

Respectfully Submitted,

JULIA M. CARPENTER*
IMAD D. ABYAD
JENNER & BLOCK, LLC
601 Thirteenth Street, N.W.
Washington, DC 20005
(202) 639-6000

Counsel for *Amicus Curiae*
The DKT Liberty Project

October 23, 2002

*Counsel of Record

Table of Contents

TABLE OF AUTHORITIES iii

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT 1

ARGUMENT 2

I. The Louisiana Campaign Statute Is A Content-Based Regulation Of Expression That Contravenes The First Amendment. 2

A. The Ban On Campaign Contributions Implicates The First Amendment's Guarantee Of Free Expression. 3

B. The Statute Is A Content-Based Regulation Of Expression Because It Cannot Be Justified Without Reference To The Content Of The Regulated Expression. 4

C. The Louisiana Campaign Statute Does Not Satisfy The "Strict Scrutiny" Standard Of Review For Content-Based Regulations Of Expression. 8

1. The Statute Cannot Be Justified By A Compelling State Interest. 9

2. The Statute Is Not Narrowly Drawn To Achieve A Compelling State Interest. 14

II. The Louisiana Campaign Statute Is A Viewpoint-Based Regulation Which Violates The First Amendment. 16

Table of Contents – continued

A. The Statute Is A Viewpoint-Based Limitation On Expression Because It Targets For Regulation Only One Side Of A Public Debate. 16

B. The Statute Contravenes The First Amendment As A Viewpoint-Based Regulation Of Expression. 17

CONCLUSION 19

APPENDIX

Verbatim Transcript, Meeting Of March 26, 1996, Senate Committee On Senate And Governmental Affairs, Louisiana State Senate 1a

Committee On House And Governmental Affairs, Minutes Of Meeting, 1st Extraordinary Session, 1996 (April 11, 1996) 19a

Table of Authorities

CASES Page

44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484 (1996) 18

Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221 (1987) 9

Boos v. Barry, 485 U.S. 312 (1988) 5

Broadrick v. Oklahoma, 413 U.S. 601 (1973) 18

Buckley v. Valeo, 424 U.S. 1 (1976) 3, 4, 8, 10, 18

Carey v. Brown, 447 U.S. 455 (1980) 10

Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984) 4

Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994) 4

FEC v. Colorado Republican Federal Campaign Committee, 533 U.S. 431 (2001) 4

Haitian Centers Council, Inc. v. Sale, 823 F. Supp. 1028 (E.D.N.Y. 1993) 18

Legal Services Corp. v. Velazquez, 533 U.S. 431 (2001) 18

Nixon v. Shrink Missouri Government PAC, 528 U.S. 377 (2000) 3, 10

Police Department of Chicago v. Mosley, 408 U.S. 92 (1972) 4, 5

R.A.V. v. City of St. Paul, 505 U.S. 377 (1992) 16, 18

Table of Authorities – continued

Page

Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 819 (1995) 17

Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board, 502 U.S. 105 (1991) 8, 9

Texas v. Johnson, 491 U.S. 397 (1989) 5

Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622 (1994) 5, 17

United States v. Eichman, 496 U.S. 310 (1990) 5, 6, 19

VanNatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998) 3

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) 17

STATUTES

18 U.S.C. § 700 5

La. Rev. Stat. Ann. § 18:1483(14)(a)(i) 16

La. Rev. Stat. Ann. § 18:1505.2(H)(1)(a) 14

La. Rev. Stat. Ann. § 18:1505.2(L)(1) 3, 7, 10, 14

La. Rev. Stat. Ann. § 18:1505.2(L)(2) 3, 15, 17

La. Rev. Stat. Ann. § 18:1505.2(L)(3) 3, 14

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BRIEF *AMICUS CURIAE* OF THE DKT LIBERTY PROJECT IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The interest of *amicus curiae* is set forth in the foregoing Motion of The DKT Liberty Project for Leave to File Brief *Amicus Curiae* in Support of Petitioner.

SUMMARY OF ARGUMENT

If it protects anything, the First Amendment protects the right of citizens to express support of and to affiliate themselves with candidates for public office. Indeed, this right of political speech is at the core of the First

Amendment. But the Louisiana Statute bans persons substantially interested in the gaming industry from exercising that right.

Louisiana's selective ban on contributions is a content-based regulation, subject to a strict scrutiny standard of review. The regulation purports to prevent corruption and undue influence. But the Statute and its history demonstrate that the legislature had no evidence of undue influence (at least not from the gaming industry), but it was quite concerned about the message that campaign contributions by gaming interests would send to a candidate's constituents. Thus, there is no compelling interest and the Statute is not narrowly tailored.

Furthermore, Louisiana's ban is impermissibly viewpoint-based as it targets only the likeliest and most motivated pro-gambling advocates. Anti-gambling persons and organizations are not similarly banned from expressing their political views through campaign contributions.

Because many States are experimenting with campaign finance reform, and because this kind of industry- or person-specific *ban* may be the subject of further experimentation if left unchecked, this Court should grant certiorari.

ARGUMENT

I. THE LOUISIANA CAMPAIGN STATUTE IS A CONTENT-BASED REGULATION OF EXPRESSION THAT CONTRAVENES THE FIRST AMENDMENT.

The Louisiana Election Campaign Finance statute ("Campaign Statute" or "Statute") prohibits an identified group of persons who are "substantially interested in the

gaming industry" from making any "contribution, loan, or transfer of funds ... to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate." La. Rev. Stat. Ann. § 18:1505.2(L)(1), (2) and (3). In prohibiting campaign contributions, the Statute violates the First Amendment's guarantee of free expression. Furthermore, the Statute targets a particular category of expression because of the message contained therein. It should be analyzed, therefore, as a content-based regulation and subjected to a strict scrutiny standard of review. As the Statute is neither justified by a compelling state interest nor narrowly drawn to achieve such an interest, it should be invalidated as an impermissible abridgement of free expression.

A. The Ban On Campaign Contributions Implicates The First Amendment's Guarantee Of Free Expression.

As a threshold matter, "[c]ontributions to political campaigns are protected speech under the First Amendment." *VanNatta v. Keisling*, 151 F.3d 1215, 1219 (9th Cir. 1998) (Brunetti, J., concurring, adopted as unanimous opinion of the court) (citing *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 657 (1990)). This Court has consistently upheld this principle. In *Buckley v. Valeo*, the Court stressed that a political contribution is clearly a "general expression of support for the candidate and his views." 424 U.S. 1, 20-21 (1976). In *Nixon v. Shrink Missouri Government PAC,* the Court applied that principle in the context of state campaign limitations and reiterated that the First Amendment's "constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." 528 U.S. 377, 386 (2000)

(internal quotation marks and citations omitted). Most recently, in *FEC v. Colorado Republican Fed. Campaign Comm.*, the Court again stressed that "contributing to political candidates ... fall[s] within the First Amendment's protection of speech." 533 U.S. 431, 440 (2001).

If the mere limitation of campaign contributions raises First Amendment issues, then plainly the Louisiana Statute's outright ban must also raise those issues. The Statute's prohibition on *any* campaign contribution by the targeted group of persons denies them the "expression of support evidenced by a contribution." *Buckley*, 424 U.S. at 21. The *Buckley* Court recognized that even the federal *limits* on contributions – which are far more generous than Louisiana's *absolute ban* – "impose direct quantity restrictions on political communication." *Id.* at 18. The Louisiana Campaign Statute, therefore, clearly implicates the First Amendment's guarantee of free expression.

B. The Statute Is A Content-Based Regulation Of Expression Because It Cannot Be Justified Without Reference To The Content Of The Regulated Expression.

Whether a government regulation is content-based or content-neutral "is critical, as it controls the level of scrutiny [to] apply in assessing whether the infringement results in a constitutional violation." *Day v. Holahan*, 34 F.3d 1356, 1360 (8th Cir. 1994). A regulation is content-neutral only when it can be "justified without reference to the content of the regulated speech." *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). By contrast, a regulation that restricts expression "because of its message, its ideas, its subject matter, or its content" is decidedly content-based. *Police Dep't of Chicago v. Mosley*, 408 U.S.

92, 95 (1972). *See also Boos v. Barry*, 485 U.S. 312 (1988) (finding as content-based a statute prohibiting *embarrassing* signs around foreign embassies because its justification focuses only on the content of the speech and the impact it has on its listeners).

Moreover, "even a regulation neutral on its face may be content-based if its manifest purpose is to regulate speech because of the message it conveys." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 645 (1994). Thus, in *United States v. Eichman*, the Court considered a First Amendment challenge to the federal Flag Protection Act ("FPA"), 18 U.S.C. § 700, which provided that whoever "knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both." 496 U.S. 310, 314 (1990). Congress had passed the FPA to replace an earlier version invalidated by *Texas v. Johnson*.[1] 496 U.S. at 314 n.3. The Government contended in *Eichman* that the FPA – unlike the Texas statute in *Johnson* and the earlier version of the federal statute – did

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[1] In *Texas v. Johnson*, 491 U.S. 397 (1989), the Court found unconstitutional a Texas statute criminalizing desecration of the U.S. flag "'in a way that the actor knows will seriously offend'" onlookers. *Id.* at 400 n.1 (quoting Texas Penal Code Ann. § 42.09 (1989)). The Court first held that Johnson's flag-burning implicated the First Amendment as conduct "sufficiently imbued with elements of communication." *Id.* at 406 (internal quotation marks and citation omitted). The Court analyzed the statute as a content-based regulation of expression because the State's asserted interest "in preserving the flag as a symbol of nationhood and national unity" is implicated only "when a person's treatment of the flag communicates some message." *Id.* at 410. Accordingly, the Court subjected the statute to "the most exacting scrutiny" and found that the State's asserted interest could not justify the abridgement of the demonstrator's First Amendment rights. *Id.* at 412-20.

not target expressive conduct on the basis of the content of its message. *Id.* at 315.[2] The Court disagreed:

> Although the Flag Protection Act contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted *interest* is related to the suppression of free expression, and concerned with the content of such expression.

Id. (internal citations and quotation marks omitted). The Court reasoned that as in *Johnson*, the Government's interest in preserving the flag as symbol of certain national ideals is "implicated 'only when a person's treatment of the flag communicates [a] message' to others that is inconsistent with those ideals." *Id.* at 316 (quoting *Johnson*, 491 U.S. at 410). The FPA was content-based because "its restriction on expression cannot be 'justified without reference to the content of the regulated speech.'" *Id.* at 318 (citing *Boos*, 485 U.S. at 320).

Similarly, the Louisiana Campaign Statute must be analyzed as a content-based regulation of expression because its ban on campaign contribution by persons "substantially interested in the gaming industry" can only be – and is – justified in connection with the *message* that such contributions would send: that the recipient of such contributions is supported by persons with substantial interest in the gaming industry. Both the terms of the Statute

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[2] The Court noted that "the Texas statute expressly prohibited only those acts of physical flag desecration 'that the actor knows will seriously offend' onlookers, and the former federal statute prohibited only those acts of desecration that 'cas[t] contempt upon' the flag." 496 U.S. at 315 (citations omitted).

and its remarkably direct legislative history demonstrate conclusively that it was exactly that message that was in the legislative cross-hairs.

The Statute itself provides that it seeks "to prevent the influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state." La. Rev. Stat. Ann. § 18:1505.2(L)(1). The legislative history illuminates that purpose. During Senate committee deliberations, and in response to inquiries about the size of the gaming industry's campaign contributions relative to other industries, Senator Dardenne – the chief sponsor of the legislation – replied:

> I just don't know the answer of what the relative percentages may be of all contributors. I will say this about this particular bill. I don't know of any other industry that was singled out in the past campaign as something for the public to look at when you had gubernatorial candidates, you had legislative candidates saying I'm not going to take money from the gambling industry or making a campaign issue over where contributions came from. This is a major, major source of concern in the minds of the public from my viewpoint as to what influence the gambling industry has had over this legislature and this government during its infancy in Louisiana and I think it is an appropriate bill to advance in the legislature to say that we are going to say it is not appropriate for the gambling industry to be making political campaign contributions.

Verbatim Transcript, Meeting of March 26, 1996, Senate Committee on Senate and Governmental Affairs, Louisiana State Senate (hereinafter, "La. Senate Hearings") at Amicus App. 11a.

Thus, the legislature was concerned that campaign contributions from persons connected with the gaming industry would send to the citizens of Louisiana a message that those contributors have an undue influence on the legislative process. To eliminate this possible perception of undue influence, the legislature simply prohibited the targeted persons from making any campaign contributions. The nexus between the perceived problem of undue influence and the legislative solution of prohibiting any contributions exists only because of "the symbolic expression of support evidenced by a contribution," and because a contribution "serves to affiliate a person with a candidate." *Buckley*, 424 U.S. at 21, 22. In other words, the Statute prohibited those contributions because of the *message* of support and affiliation contained in them. Accordingly, because the Louisiana Statute can only be justified by reference to the content of the regulated expression, it must be analyzed as a content-based regulation.

C. The Louisiana Campaign Statute Does Not Satisfy The Strict Scrutiny Standard Of Review For Content-Based Regulations Of Expression.

Content-based government regulation of speech is presumed unconstitutional unless the regulation is justified by a compelling governmental interest and is narrowly drawn to achieve that particular interest. *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*,

502 U.S. 105, 118 (1991) (citing *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987)). The Louisiana Statute's ban on campaign contributions by gambling interests fails to meet either requirement.

1. The Statute Cannot Be Justified By A Compelling State Interest.

When evaluating whether the interest offered by the state is either real or compelling, this Court's review has been searching. In *Simon & Schuster*, for example, New York's "Son of Sam" law required that an accused or convicted criminal's income from works describing the crime be first made available to compensate the victims of that crime. 502 U.S. at 109. New York argued that its interest was in "ensuring that criminals do not profit from storytelling about their crimes before their victims have a meaningful opportunity to be compensated." *Id.* at 119 (internal quotation marks and citation omitted). The Court rejected this claim:

> the Board has taken the *effect* of the statute and posited that effect as the State's interest. If accepted, this sort of circular defense can sidestep judicial review of almost any statute, because it makes all statutes look narrowly tailored.

Id. at 120. Instead, the state interest, was "compensating victims from the fruits of the crime" because the distinction between the proceeds of such criminal's "storytelling" and any of the criminal's other assets is irrelevant to the State interest in compensating the victims. *Id.* at 119-21. *See also Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987) (distinction drawn in content-based taxation of

magazines not justified by State interest in raising revenue through taxation because the press/non-press distinction was irrelevant to that interest); *Carey v. Brown*, 447 U.S. 455, 467-69 (1980) (State interest in preserving privacy by prohibiting residential picketing insufficient to justify State's ban on non-labor picketing because nothing in the labor/non-labor distinction bore on that interest).

Like those cases, the distinction drawn by the Louisiana legislature – gaming industry contributions *versus* non-gaming industry contributions – does not bear on the State's asserted interest in preventing influence or corruption "by special interests." La. Rev. Stat. Ann. § 18:1505.2(L)(1). "Special interests" are, of course, any group that advocates any position on any issue. Thus, adding the term to the Statute does not narrow the State interest at all. To be sure, a government interest in guarding against corruption, and the appearance of corruption, of the political process has been held sufficiently compelling to justify campaign contribution limits. *Buckley*, 424 U.S. at 26-27; *Shrink Missouri*, 528 U.S. at 390. Critically, however, that interest related to all contributions, independent of the nature or identity of the contributor.

Here, the Statute also takes the effect of the regulation – no gambling influence – and posits that as the legislative purpose. But the plain purpose is to avoid having the public think there might be undue influence. The legislative history plainly shows that contributions from the gambling industry were a campaign issue. La. Senate Hearings at Amicus App. 10a-11a (Statement of Senator Dardenne). That history also shows quite candidly that the legislature had no evidence at all of the level of such contributions, or how they compared to other industries, or even any allegations of corruption, although it had substantial allegations about other industries:

Senator Bagneris: Also you mentioned that it was narrowly tailored and Senator Ellington has pointed that out as well from the standpoint as to who it applies to but it's also narrowly tailored as to the industry that we're effecting and you said that given the history that we have in this state you feel that there is sufficient compelling reason for the state to narrowly tailor it to the industry. Would you not agree that given the history of the state we could just as easily include the insurance industry given the fact that the last two commissioners went to jail … or that we can include different aspects of the medical industry given the articles that have appeared in the paper, visa vie [*sic*] contributions and legislators involved? And we can expand this legislation if our concern is how contributions influence the legislative process?

Senator Dardenne: No, I wouldn't agree with that.... I would not be in favor and would urge that we not adopt amendments that sought to expand this prohibition. This is designed and it is directed to specifically at the gambling industry and to say we believe in Louisiana; we ought to limit the gambling industry's influence in the political process.

Senator Bagneris: I think the Supreme Court ruled the way they did given the New Jersey situation because of the number of elected officials that did go to jail that could be shown the influence there when you had

mayors going to jail, you had city councilmen going to jail, you had a governor going to jail and we haven't had one as of yet elected official go to jail in connection with the gambling industry or how it came to Louisiana or any of those things. I just wonder whether it would stand a Supreme Court scrutiny about the First Amendment rights given the differences in the two states.

Senator Jones: Perhaps this should be directed to the staff. Do we have any information at all regarding different industries contributions to political candidates to members of the legislature? For example, do we know for a fact that the gaming industry has contributed more to members of the legislature than has a business or insurance companies or trial lawyers? Do we know that?

Diane Burkhart: No sir, I don't have that information at hand.

Senator Jones: I think, Ellington said we could include trial lawyers. I don't think that's a good idea. But, I am interested in finding out since one of the questions the chair has raised is obviously if we're going to narrowly tailor it to make sure that there's not undue influence or a disproportionate amount of contributions to have to participate in the process. Do we know, for example, that a half million dollars has been contributed by gaming to members of the legislature in the

> House and the Senate and we know that $3 million has been contributed by business then I'd be interested in knowing that so that we can really look at who is influencing the legislative process.
>
> Diane Burkhart: Senator, I'm not aware.... I'm not aware as to whether the campaign contribution reports necessarily identify contributors by vocation or employer or their business source....

La. Senate Hearings at Amicus App. 7a-9a. It is also significant that this bill was a substitute for the original bill, which would have prevented candidates from accepting contributions from gaming interests. *Id.* at Amicus App. 2a. That approach was dropped because, the legislature decided, the candidates might not know whether the contribution was from a gaming interest. Of course, if they did not know, the contribution could hardly influence the legislation. But the concern was the appearance of any influence, undue or not.

While preventing corruption may well be a compelling state interest justifying some limitation of campaign contributions from all persons, banning a specific industry from speaking because of fear of political backlash is surely not. Those who are substantially involved in gaming businesses and their spouses have the same right to exercise their political speech rights as anyone else. Thus, no compelling interest justifies the Louisiana Statute.

2. The Statute Is Not Narrowly Drawn To Achieve A Compelling State Interest.

Nor is the Louisiana regulation narrowly drawn to achieve the asserted state interest. Significantly, campaign contributions for all Louisianans are already limited. *See* La. Rev. Stat. Ann. § 18:1505.2(H)(1)(a) (limiting citizen and corporate contributions). Those provisions apply to the citizens and corporations targeted by the gambling-specific regulation at issue here.

The Louisiana Statute is under-inclusive because it singles out the gambling industry when other industries pose the same or a higher risk of corruption. Despite the use of the general term "special interests" in the statement of legislative purpose, the Statute targets only those persons "substantially interested in the gaming industry in the state." La. Rev. Stat. Ann. § 18:1505.2(L)(1). It limits the prohibition on campaign contributions to licensees of riverboat or casino gambling operations; holders of interest in gambling businesses; directors, officers, trustees, partners, and senior and key employees of such businesses; and the spouse of any such individual. La. Rev. Stat. Ann. § 18:1505.2(L)(3). No other industry is targeted; no other "special interest." Indeed, interestingly, the Statute does not even cover all gambling interests. In the Senate Committee debate, one member questioned whether race tracks or lotteries would be affected: "I mean, the governor is just focusing on casinos and video games, not lottery and race tracks. Right?" La. Senate Hearings at Amicus App. 16a.

Debate over this measure also included substantial questions about why other industries were not targeted. *See* La. Senate Hearings at Amicus App. 7a-11a. As noted

earlier, Senator Bagneris, for example, pointed out that if a history of corruption justified the regulation, then other industries were at least as worthy of the legislature's special attention as the gaming industry. *Id.* at Amicus App. 7a-9a. Similarly, in the House committee deliberations, Representative Copelin commented that "if a single industry is to be singled out, it should be done fairly," and noted that he had introduced a bill that "would prohibit all corporations from contributing to campaigns and allow only contributions from natural persons." Committee on House and Governmental Affairs, Minutes of Meeting, 1st Extraordinary Session, 1996 (April 11, 1996) at Amicus App. 23a. But these objections did not lead the legislature to make the bill more inclusive. As it stands, then, the regulation is plainly under-inclusive.

It is also over-inclusive. First, it is a *ban*, not a limit. Thus, it does not level the playing field to avoid *undue* influence. Instead, it ejects a specific group of people from the playing field altogether. Second, the ban applies to *any* campaign contribution by those persons deemed substantially interested in the gaming industry in Louisiana, made to *any* candidate or political committee that supports or opposes a candidate, for *any* purpose. La. Rev. Stat. Ann. § 18:1505.2(L)(2). Thus, it is not designed to limit the gambling forces' influence over gambling regulators, for example. Indeed, the ban is not tied in any way to contributions that would relate to influence over gambling. Rather, it prevents even political contributions to political committees that advocate for environmental issues or health care, if the committee happens to support or oppose a candidate.[3] *See* La. Rev. Stat. Ann. § 18:1505.2(L)(2). The

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[3] A "political committee" is defined in the Louisiana Election Code as "two or more persons, other than a husband and wife, and any

Statute's ban reaches issue-focused advocacy that poses no risk of undue influence on the legislature, and limits the targeted persons' freedom of expression well beyond the limits of preventing corruption.

Thus, the Louisiana regulation cannot be justified by a compelling state interest, and is not narrowly drawn to achieve such an interest. It should be invalidated.

II. THE LOUISIANA CAMPAIGN STATUTE IS A VIEWPOINT-BASED REGULATION WHICH VIOLATES THE FIRST AMENDMENT.

The Louisiana Campaign Statute is not only content-based, it is also a viewpoint-based regulation because it singles out for regulation only the most visible *pro*-gambling voices in Louisiana. The First Amendment prevents the government, however, from proscribing speech or expressive conduct because it disapproves of it. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). Therefore, the Louisiana Statute is also unconstitutional as a viewpoint-based restriction on expression.

A. The Statute Is A Viewpoint-Based Limitation On Expression Because It Targets For Regulation Only One Side Of A Public Debate.

The regulation here selectively targets a group that represent only one side of the controversial gambling issue in Louisiana. The campaign contribution ban applies only to

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corporation organized for the primary purpose of supporting or opposing one or more candidates, *propositions*, recalls of a public officer, or political parties...." La. Rev. Stat. Ann. § 18:1483(14)(a)(i) (emphasis added). The definition plainly reaches "issue" campaigning, and not just campaigns for political office.

licensees, owners, and senior and key employees of gambling businesses, and their spouses. La. Rev. Stat. Ann. § 18:1505.2(L)(2). These are the individuals and entities most interested in the success of gambling in Louisiana, and thus most likely to advocate the pro-gambling views. Indeed, that is why the legislature selected them. But persons and organizations opposed to the gambling industry are not similarly banned from the political expression of making a campaign contribution. In banning only likely pro-gambling contributors, therefore, the Louisiana legislature has indicated its disfavor for the pro-gambling viewpoint. The Statute, therefore, must be analyzed as a viewpoint-based regulation.

B. The Statute Contravenes The First Amendment As A Viewpoint-Based Regulation Of Expression.

Neutrality in government regulation of expressive activities is the bedrock of the First Amendment. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein"). *See also Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819, 829 (1995) ("Viewpoint discrimination is [] an egregious form of content discrimination"); *Turner Broad. Sys.*, 512 U.S. at 642 (viewpoint discrimination is subject to "the most exacting scrutiny").

Viewpoint-based government regulations of First Amendment activities have been held invalid even in traditionally less protected – or even unprotected –

categories of expression. In a case involving government-funded speech, for example, the Court invalidated a regulation prohibiting Legal Services Corporation lawyers from raising challenges to federal welfare laws. *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 546 (2001). The Court held that the regulation was viewpoint-based because it tried to "exclude from litigation those arguments and theories Congress finds unacceptable." *Id.* *See also 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 512 n.20 (1996) (striking down a traditionally less-protected commercial-speech regulation that bans advertising of retail liquor prices except at the place of sale); *R.A.V.*, 505 U.S. at 394 (invalidating a bias-motivated disorderly conduct ordinance construed narrowly to ban only constitutionally unprotected "fighting words" because it singled out speech expressing racial, religious or gender intolerance); *Haitian Centers Council, Inc. v. Sale*, 823 F. Supp. 1028, 1041 (E.D.N.Y. 1993) (exclusion of attorneys – but not clergy or press – from detention center because of what they were expected to say was viewpoint-based violation of First Amendment).

Here too, the Louisiana legislature impermissibly singles out a particular viewpoint for its ban. In prohibiting campaign contributions by only those most likely to advocate a specific point of view, the Statute punishes them by denying them the ability to participate in the political process through "the symbolic expression of support evidenced by a contribution." *Buckley*, 424 U.S. at 21. Nor can it be argued that the statute is adequate because it allows others with pro-gambling views to make contributions. That others can speak has never been held a remedy for depriving some of the chance to express their views; quite the opposite is true. *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973) ("it has been the judgment of this Court that the possible

harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted"). The legislature specifically targeted pro-gambling voices because it concluded that the public disapproved of that viewpoint being heard. *See* La. Senate Hearings at Amicus App. 11a. The notion that speech of a particular viewpoint can be accorded less protection "as popular opposition to that speech grows is foreign to the First Amendment." *Eichman*, 496 U.S. at 318. Accordingly, because the Louisiana Campaign Statute prohibits campaign contributions by only those who hold pro-gambling views, it should be declared unconstitutional.

CONCLUSION

Louisiana's ban on campaign contributions by persons substantially interested in the gambling industry is a content-based regulation of protected expression that cannot be justified by a compelling state interest, and is not narrowly drawn to achieve such interest. Moreover, the regulation is impermissibly viewpoint-based in that it targets only one side of a public debate. Therefore, it should be declared unconstitutional.

Respectfully Submitted,

JULIA M. CARPENTER*
IMAD D. ABYAD
JENNER & BLOCK, LLC
601 Thirteenth Street, N.W.
Washington, DC 20005

October 23, 2002

*Counsel of Record

APPENDIX

Louisiana State Senate

Committee on Senate and Governmental Affairs

VERBATIM TRANSCRIPT
MEETING OF MARCH 26, 1996

I. CALL TO ORDER

A meeting of the Senate Committee on Senate and Governmental Affairs was held on Tuesday, March 26, 1996 at 10:00 a.m. in Senate Committee Room F at the State Capitol in Baton Rouge, Louisiana. The meeting was called to order by the chairman, Senator Jay Dardenne, at 10:07 a.m.

* * * *

III. LEGISLATION TO BE CONSIDERED

Senate Bill 12 by Senator Dardenne

Senator Dardenne: The first bill is Senate Bill 12 which is the prohibition on contributions from certain entities in the gambling world. Let me basically run through the highlights of this bill for you as you look it over yourself. Basically the bill prohibits the direct or indirect contribution or a loan or transfer to a candidate for a major or district office. We have, in fact is this the bill we're going to have a substitute on before I get started? Alright, why don't you pass that out I'm sorry if we have copies of that. It's in there? Okay.

We're going to handle this bill by substitute because as you know this is one of the bills that was circulated prior to the session with a request for comments from people. We got some very good suggestions from people on this bill because as you all know it's a difficult bill to convect and because there were some significant amendments we decided to do this by substitute and so we will be considering the substitute bill this morning. The primary difference from the original bill and the substitute bill is that the substitute bill basically is designed to punish the giver. If the gambling entity makes a contribution it is going to be subject to scrutiny by the oversight regulatory board for gambling and is designed to basically be punitive toward that contributor if they give to someone and they are prohibited from giving. The main concern that has been expressed is that a recipient may very well unknowingly, and this addresses one of the concerns Dennis raised yesterday, accept a contribution no knowing someone is in the gambling world at all and that is a legitimate concern because of the penalties that are going to be visited upon the recipient. And so the approach we're taking is to provide some significant punitive measures to the giver and to provide that if it is brought to the attention of the recipient then that money is going to . . . (inaudible word) to the state. In other words, they could not keep it in their campaign. The money would have to be transferred over to the state if the contribution is actually made. That's the intent of the bill and we're attempting to track as well in this legislation what was done in New Jersey which is the only state we know of that has imposed a statutory ban on gambling contributions. To make this bill constitutional, it has to be narrowly tailored, it has to address what is believed to be a compelling state interest and I believe we can satisfy that here in Louisiana about the concern of the gambling industry's impact on the legislative process. But we want to

be careful in this legislation that it is not over-reaching and that it is narrowly drawn and that is what we're seeking to do with the substitute bill. The people who would be prohibited from giving under the bill regarding video poker would be anyone who is licensed as a manufacturer of gaming devices, a distributor of gaming devices or a device service entity or anyone who owns a truck stop with video poker machines or a horse track or OTB parlor with machines. This would also extend to the spouse of anyone who fits into that category. Same would hold true as to riverboats. Anyone who is licensed to conduct gaming aboard a riverboat or is a distributor or supplier of gaming devices or a manufacturer of these gaming devices. And as to the land based casino, any person who holds the casino operating contract or again is licensed as a distributor or manufacturer of gaming devices or anyone who owns a casino. The ownership interest would address a 10% owner. Anyone who had a 10% or more ownership interest would be applicable to these provisions. And the bill would also extend to an officer, director or management level employee of any such entity. Now that's the highlights of the bill. Let me see who we've got that wants to speak. We have for information only Tom Casey with Harrah's. In support of the bill, Harold Suire, Stephanie Desselle from Council for A Better Louisiana and the People's Agenda. In support of the bill Catherine Patterson from AARP, Mildred Marsal from AARP and available for information is Maris McCrory at the Ethics Administration. Nobody's against this bill? We don't have any. Information only from Mr. Casey but I don't have any cards in opposition, but Senator Ellington.

Senator Ellington: I come back to, as I appreciate this we say major candidates or district offices? Is that who we're talking about? We're not talking about any mayor

candidates or any councilman or any of these kinds of people that could be just as influenced as the legislature?

Senator Dardenne: That's correct. In this bill we're dealing with major offices and district office candidates again in an attempt to narrowly tailor the legislation to address what is believed to be a compelling state interest which would be the problems we've experienced at the state level with the gambling industry. That is why I think it is important that we try and narrowly tailor this bill to make it constitutional.

Senator Ellington: You do think it needs to stay narrow?

Senator Dardenne: I do. I do and that's why we've drafted it as such.

Senator Ellington: I'm not sure I agree but okay. I'll take that.

Senator Jones: Mr. Chairman, I understand, I think I understand your rationale with respect to trying to keep it narrowed and focused and all that but if we pass these local options and local governing authorities are called upon to call these elections would it not be wise to in light of that to include some of the local perhaps policy makers?

Senator Dardenne: I don't disagree at all with your concern and I think once we get into local option you certainly have the potential for there to be situations where gambling contributions to local governing officials could be even more keen. My concern though is in narrowly tailoring the legislation to address a compelling state interest. I think an argument can be made that the compelling state interest argument would extend as well to local government officials.

I'm not against it in concept. I think as we've looked at the case law and we've looked at the particularly the Supreme Court decision that we've got to deal with, with campaign contributions, our thought is the most appropriate approach is this. What are you telling me? Ms. Burkhart is pointing out that district office, the definition of district office would be covered in this legislation does extend to any office that would be elected parish wide. It would not go so far as an individual council member, an individual police juror, but anyone who would be elected on a parish wide basis would fall under the definition of district office that is in the bill now.

Senator Ellington: A sheriff.

Senator Dardenne: A sheriff, a mayor, anyone else, parish presidents.

Senator Ellington: Not a mayor.

Senator Dardenne: Well, some mayors. In Baton Rouge, the mayor but in smaller communities a parish president, a mayor.

Senator Ellington: I still say if we're going to clean up, if we're going to start why don't we, I mean we're just sweeping it to another place. Why don't we get it all? If we're taking in sheriffs and clerks and all those people why don't we include the mayors and the police jurors and if there's a good reason you know I'm fine but I don't know what it is yet. That good reason I'm talking about.

Senator Dardenne: And I tried to explain the basic reasoning that I think the lawyers have looked at in terms of the

compelling state interest. I'm certainly not going to suggest to you that if we put them in there the bill is unconstitutional because I would not concede that. I think it would still be constitutional. I think unfortunately we can make a strong argument in Louisiana that there is a compelling state interest to prevent the gambling industry from making contributions and there has been unfortunate data that would support that based upon some investigations that have been underway and the problems we've seen. So I think we could support the constitutionality of the bill in its initial draft. We attempted to make it narrow though for just district offices, major offices, and those who would in essence focus on the statewide impact of gambling as opposed to the local nature of gambling. I think the argument is very well made that as we move more toward local option or toward letting local governments, particularly elected officials, make decisions whether or not something goes on the ballot we would capture in advance any concerns about whether the gambling contributions would infiltrate that market. So, I'm certainly willing to consider amendments if you deem them appropriate to extend beyond that.

Senator Ellington: Well I do and then we'll see if that's okay with the committee and we'll see what we think. But I just feel like if we're going to take in some, let's go ahead and take in everybody, take in the whole thing.

Senator Bagneris: You mentioned a Supreme Court case and I'm assuming that you're talking about possible First Amendment rights conflict that this legislation would have. Do you feel comfortable with the bill as written doesn't have a First Amendment problem?

Senator Dardenne: Yes, I do. I think we've got to be

cognizant of the Buckley case we're talking about and the Buckley case is the case on political campaigns and the fact that political expression is at the heart of the First Amendment and that anything you do to undermine political speech or campaign contributions is going to be subject to strict scrutiny, compelling state interest tests and I think this bill would have to be measured by that standard when it is looked at constitutionally. I think this bill can pass that muster. I think the New Jersey Supreme Court has already allowed that to take place in the situation in New Jersey where casino contributions specifically were barred and I think we can make that same argument here in Louisiana. I think this is something we ought to do. I'm certainly not going to suggest to you it's not going to be challenged constitutionally because a lot of what we do is going to be subject to challenge but I think a lot of time and thought has been given to this bill and the staff has worked on it carefully to try and craft it so that it would pass constitutional muster and I think it does.

Senator Bagneris: Also you mentioned that it was narrowly tailored and Senator Ellington has pointed that out as well from the standpoint as to who it applies to but it's also narrowly tailored as to the industry that we're effecting and you said that given the history that we have in this state you feel that there is sufficient compelling reason for the state to narrowly tailor it to the industry. Would you not agree that given the history of the state we could just as easily include the insurance industry given the fact that the last two commissioners went to jail, not counting the one that's presently serving or that we can include different aspects of the medical industry given the articles that have appeared in the paper, visa vie contributions and legislators involved? And we could expand this legislation if our concern is how

contributions influence the legislative process?

Senator Dardenne: No, I wouldn't agree with that and I think that this industry stands onto itself and ought to stand onto itself as one that we ought to be singling out for the purpose of trying to limit their involvement in the legislative process and unfortunately I think it is appropriate to look to what has happened over the course of the past couple of years specifically on how individuals within the industry have been accused of attempting to influence the legislative process based upon the industry's entry into the state. That, I think, can be significantly differed from what happened in the medical situation or the insurance situation where individuals got indicted based upon their actions while serving in office attempting to take advantage of their particular power, whereas I think in this particular case we can look unfortunately to some things that have allegedly happened from an industry standpoint on how gambling came to be in Louisiana. I think that can be differentiated. I think it should be differentiated and that's why the bill is directed at the gambling industry. I would not be in favor and would urge that we not adopt amendments that sought to expand this prohibition. This is designed and it is directed to specifically at the gambling industry and to say we believe in Louisiana; we ought to limit the gambling industry's influence in the political process.

Senator Bagneris: I think the Supreme Court ruled the way they did given the New Jersey situation because of the number of elected officials that did go to jail that could be shown the influence there when you had mayors going to jail, you had city councilmen going to jail, you had a governor going to jail and we haven't had one as of yet elected official go to jail in connection with the gambling

industry or how it came to Louisiana or any of those things. I just wonder whether it would stand a Supreme Court scrutiny about the First Amendment rights given the differences in the two states.

Senator Jones: Perhaps this should be directed to the staff. Do we have any information at all regarding different industries contributions to political candidates to members of the legislature? For example, do we know for a fact that the gaming industry has contributed more to members of the legislature than has a business or insurance companies or trial lawyers? Do we know that?

Diane Burkhart: No sir, I don't have that information at hand.

Senator Jones: I think, Ellington said we could include trial lawyers. I don't think that's a good idea. But, I am interested in finding out since one of the questions the chair has raised is obviously if we're going to narrowly tailor it to make sure that there's not undue influence or a disproportionate amount of contributions to have to participate in the process. Do we know, for example, that a half million dollars has been contributed by gaming to members of the legislature in the House and the Senate and we know that $3 million has been contributed by business then I'd be interested in knowing that so that we can really look at who is influencing the legislative process.

Diane Burkhart: Senator, I'm not aware. I think Ms. McCrory is out there somewhere. I'm not aware as to whether the campaign contribution reports necessarily identify contributors by vocation or employer or their business source. I know that was at one point discussed, but

in order to make that distinction that information would have to come from the supervisory committee as they are the holders of campaign contribution records and I assume in order to make that distinction that's information they would have to have. I don't know whether the reports require that information now or not. I don't think they do.

Senator Jones: I don't know. I agree that they probably don't require that but I think there is information that I personally would like to have and I think other members of the legislature might want to look at, not as relates to what opposition is on this issue but certainly we want to know exactly who was making what contributions from what industries so we can know exactly as to how it has been impacted. And I think it is fairly easy to discern if a senator receives a check from State Farm you know that's an insurance check or if they receive a check from ABC Truck Stop, video poker or whatever, that's a gaming check. So this Senate ought to have the wherewithal to produce that kind of information so we could know.

Diane Burkhart: I think it's a question of what the law requires be reported and I would suggest that to do so would certainly, I estimate, be prospective only in that the existing information with regard to campaign contributions is probably not in the record and may involve amending the law in order to require the collection of that kind of information.

Senator Dardenne: I think what Senator Jones is saying is that you could probably get it even without a designation of what the entity was but I don't know that that is -- I mean you talk about a monumental task is pouring through everybody's campaign finance report and trying to do that.

Some may have done it. We may all know individually from where our contributions come but I don't know that that information is as readily available as it might seem to be but I understand the question you ask. I just don't know the answer of what the relative percentages may be of all contributors. I will say this about this particular bill. I don't know of any other industry that was singled out in the past campaign as something for the public to look at when you had gubernatorial candidates, you had legislative candidates saying I'm not going to take money from the gambling industry or making a campaign issue over where contributions came from. This is a major, major source of concern in the minds of the public from my viewpoint as to what influence the gambling industry has had over this legislature and this government during its infancy in Louisiana and I think it is an appropriate bill to advance in the legislature to say that we are going to say it is not appropriate for the gambling industry to be making political campaign contributions. Any other questions, comments? Senator Greene.

Senator Greene: I just move we report the bill favorably.

Senator Ellington: I have an amendment.

Senator Greene: Okay, go ahead.

Senator Dardenne: Yes, if you'll hold that motion. Senator Ellington has an amendment. If you would offer that amendment.

Diane Burkhart: Senator Ellington is offering for the purposes of committee consideration Senator Ellington is offering an amendment to the substitute bill. If it is adopted

and then the bill is otherwise reported by the substitute you have in front of it the substitute will contain this change. On page 2 of the substitute, line 11, delete the words "for a major or district office" and on page 2, line 13, delete the words "for a _____ or district office".

Senator Ellington: Again, I just feel like that you know if we're going to stop it then we need to stop it and I think with the local option and as much influence as local government could have with the gambling industry I just feel that that would be appropriate.

Senator Dardenne: Senator Ellington offers the amendment to make it applicable to any candidate for office, as I appreciate the amendment. Is that correct? Discussion on Senator Ellington's amendment. Is there any? Diane, do you have any?

Diane Burkhart: I'm sorry. I understood you to ask a question. I didn't quite hear.

Senator Dardenne: No, I didn't ask one. I don't believe. I said is that correct. Kind of a rhetorical question, I guess. My appreciation is the amendment seeks to make this applicable to any candidate for public office.

Senator Ellington: That's correct.

Senator Dardenne: And of course the point being that we're going to make it extend to anyone who could possibly be influenced by the gambling industry at even a local level, not just a legislative level. Any further discussion or questions on the amendment? Is there any opposition to the amendment? Without opposition the amendment is adopted.

Further discussion on the substitute bill as amended? Senator Casey. Did you fill out a card? Yes. This is for information only.

Tom Casey: Mr. Chairman, members of the committee. The only reason I submitted a card. I spoke to the chairman prior to commencement of this meeting and indicated to him what I view as a possible problem and that's with regard to the definition of management level employee. I don't know where that's defined and I'm not sure. I don't know what a management level employee is unless you try and tie it down. You're dealing with a criminal statute and those were criminal practitioners realize that if you're going to have a prosection in this area of the law it has to be something rather firm that the district attorney can get his teeth into and without any questions whatsoever point to this one as definitely a management level and this one a definitely not management level. So I think, I suggested to the chairman the possibility of inserting the words "senior management level employee." I'm not even sure if that does it but I think I see the intent of the bill is to get the high level hierarchy members of whatever organization this is talking about.

Senator Ellington: Let me ask a question. To me that means these people who are paid a salary versus people who are paid by the hour. Is that not a decent definition for management level?

Senator Dardenne: I'm not sure it is, Noble, and I was talking earlier. I think the concern is well founded but at least from my standpoint on the intent of this we are trying to get to people who are in the hierarchy of the organization and you could certainly have a vagueness question if you have someone who has a designation of manager and say, for

example, they're manager of the motor pool if the boats may have a motor pool of vans or whatever and there may be some designations there. They're the manager of the fleet or they're the manager of the whatever restroom area may exist somewhere and then they may in their nomenclature call somebody a manager and that's not who we're trying to reach. We're trying to reach the people who are at the decision-making level and I do think the insertion of the word "senior" makes it clear who we're trying to get to. We're not trying to get to every single rank and file employee. We're trying to get to people who are in control positions, owners and then partners, directors, what have you, and management level people and I don't have any objection to that amendment. In fact, I'll offer for the sake of discussion, let's get it out there, I'll offer the amendment to insert the word "senior" on line 25 of page 3 and we can talk about it a little more. But I think it is an appropriate observation based upon who we're trying to direct this at.

Senator Ellington: To you, Mr. Casey, is everyone paid by the hour or don't you have salary people and then hourly people after that?

Tom Casey: I would think in most organizations you have salaried people.

Senator Ellington: Are they not considered the management?

Tom Casey: I don't believe so. I think most people who receive a set salary who are not at all management level employees whether they be a secretary or a dealer or what have you. I gotta tell you honestly I don't know which ones are hourly and which ones are salary.

Senator Ellington: Okay. I thought maybe you might.

Tom Casey: There are some people who are salary who are not managerial. This is a tough question. I know what Senator Dardenne really means and how you define it is another problem. I think we're probably talking about management level people who establish policy and report directly to the president or CEO of an organization and in most organizations these will be vice-presidents anyway but not in every organization. So I think in all fairness to the management level personnel that runs the motor pool, as Senator Dardenne indicated, you may to keep preventing presenting problems of vagueness and you if you want to purposely endanger any employees and make them susceptible to indictment.

Senator Dardenne: I agree.

Tom Casey: But that may solve the problem.

Senator Dardenne: The amendment is to refer to "senior management level employees." Yes, Diane. **END OF SIDE A.**

TAPE 1, SIDE B

Senator Dardenne: Well why don't we do this. Well let me withdraw that amendment and resubmit to say "senior management level or key employee" and then we're going to key into a definition in the Casino Act that refers to a key employee to make it clear that we're directing this at key employees as well as senior management level employees to the extent that there may be some differentiation between

them. Thank you, that's a good addition. So the amendment will be "senior management level or key employee" added to the list that's already there. Is there any further discussion on the amendment? Is there any opposition to that amendment? The amendment is adopted. Any further discussion on the bill?

Senator Bagneris: Yea, I have a question. The bill applies to all gaming or gambling however you want to phrase it so you would not be allowed to accept a check political contribution from say race track owners.

Senator Dardenne: Who have OTBs or video poker devices at the track which is pretty much all of them.

Senator Ellington: That's all of them.

Senator Dardenne: That's correct.

Senator Bagneris: You wouldn't be able to accept a check from race track owners.

Senator Dardenne: That's right.

Senator Bagneris: Although the race track has been excluded from the bill dealing with gaming industries and eliminating not expanding. I mean, the governor is just focusing on casinos and video and not lottery and race tracks. Right?

Senator Dardenne: That's right.

Senator Bagneris: Okay. How about lottery officials or grocery store owners that are selling lottery tickets. How are

they affected?

Senator Dardenne: They should not be affected as I appreciate the way the bill is drafted. And of course just going back to your race track question, of course the reason there is that the race track is now in the business of video poker and to the extent that they have the extensive video poker presence there they have been included in this bill.

Senator Bagneris: No, I'm not going to oppose the bill. I've got to do some research on kind law and I've got other friends of mine on the Senate Floor who know a lot more about constitutional law than I do. I raise the questions and there are some vagueness problems with the bill but I can tell it's going to get out of committee and I'm not going to oppose it.

Senator Dardenne: Alright, further questions, comments. Senator Greene moves that the substitute bill be reported favorably as amended. Is there any opposition to the bill? Reported by substitute, I'm sorry. That the bill be reported by substitute. Without opposition the bill is reported by substitute.

Unidentified Question:

Senator Dardenne: It's available right now. Not as amended. When will that be available?

Diane Burkhart: This afternoon. You'll have to have it this afternoon to accept the committee's report.

Senator Dardenne: It doesn't have a number yet. It won't have a number yet but it will be the substitute bill to Senate

Bill 12.

Senator Ellington: You know what the changes are.

Senator Dardenne: Senate Bill 68 by Senator Hainkel. I know Senator Hainkel is tied up in Jud A. Senate Bill 65 by Senator Short. Is Senator Short here? Senate Bill 81 by Senator Bean. Senate Bill 103 by Senator Greene. Where did Senator Greene go? We'll come back to those bills if the authors show up and would like the bills heard. Senate Bill 116 by Senator Cox. And if you would, if the sergeant at arms could locate Senators Hainkel, Short, Bean or Cox, if they'd like to have their bills heard and Senator Lentini, we will hear them. If you would get Senator Lentini please and we'll hear Senate Bills 117 and 118.

Senator Ellington: Are these other contributions bills basically the same as this substitute?

Senator Dardenne: I don't know, Noble. I'm not sure how close they are.

Senator Ellington: Did that bill say anything about loans?

Senator Dardenne: Yes. It prohibited loans, too. Do we have the amendments to 130 yet, the bill that we were working on yesterday? Why don't we go on and do that while we're waiting for Senator Lentini.

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COMMITTEE ON HOUSE AND GOVERNMENTAL AFFAIRS

Minutes of Meeting
1st Extraordinary Session, 1996
April 11, 1996

I. CALL TO ORDER

Representative Charles D. Lancaster, Jr., chairman of the Committee on House and Governmental Affairs, called the meeting to order at 9:25 a.m. in Committee Room 5. The secretary called the roll.

* * * *

III. DISCUSSION

Senate Bill No. 194 by Senator Dardenne

Senate Bill No. 194 prohibits gaming persons and entities from making campaign contributions, loans, and fund transfers. The bill was presented by Senator Dardenne with assistance from Mr. Rodney Braxton, Office of the Governor, P. O. Box 94004, Baton Rouge, Louisiana.

Senator Dardenne pointed out that he has attempted to address the constitutional issue of prohibiting certain individuals from making campaign contributions in the drafting of Senate Bill No. 194. He noted that in order to pass constitutional scrutiny, such legislation must be very narrowly tailored and specific in what it allows and does not allow. He stated that the prohibition in the bill is limited to those who can be identified as being directly involved with

the gambling industry at an instrumental or management level. Specifically, he explained, the bill prohibits individuals in video poker, riverboats, and the casino who are licensees, manufacturers of gaming devices, distributors of gaming devices, licensed as device service entities, or in the case of video poker, an owner of a truckstop, horsetrack, or offtrack betting parlor with machines from making any campaign contribution or any loan to any candidate for public office. He reported that the Senate amended the bill to also include lobbyists who represent the gambling industry in the prohibition. Further, any individual who owns 10% or more interest in any of the listed industries would be prohibited from making campaign contributions. He stated that the bill does not extend to rank and file employees of these industries, nor to restaurants and bars which have video poker machines in their establishments.

The Honorable M. J. Foster, Governor of Louisiana, P.O. Box 94004, Baton Rouge, Louisiana, testified in favor of the bill. He stated that as long as there is a gaming industry in the state, prohibiting those involved from influencing the business of the state by making campaign contributions would greatly help encourage public confidence in government. He noted that there have been constitutional questions raised in the past on the concept of singling out an industry and prohibiting their contributions and stated that other states have addressed the question by finding that the gaming industry is different from other business because of the money involved, its operation, and its influence on the political process on both the state and local levels.

Representative Copelin stated that he supported the bill but said that it is overly broad in its prohibition. He asked for clarification from the staff as to whom is included.

Ms. Patricia Lowrey-Dufour, staff research analyst, explained that besides those who are licensed to distribute or manufacture gaming devices or to operate gaming facilities or activities, owners of 10% direct or indirect interest in any of such entities, and any holding, intermediary, or subsidiary company of such entities, and any officer, director, trustee, or partner of such holding, intermediary, or subsidiary company would be prohibited from contributing. Further, any entity in which the individual or legal entity holding the license or who has interest in the individual or legal entity holding the license is an officer, director, trustee, or partner is prohibited from contributing. Finally, the spouse of any listed person and lobbyists acting in a representative capacity for any listed person are included in the prohibition.

Representative Copelin stated that while the intent of the legislation is to prevent the use of another entity in making a contribution that someone could not legally make directly, which concept he said he supports, the bill includes some who are not easily identifiable. He pointed out that an officer of a bank or part owner in another unrelated business who is also an officer or board member of a contracted entity which runs a casino would be included in the prohibition.

Senator Dardenne disagreed that this was the case and stated that such was not his intention.

Ms. Lowrey-Dufour agreed with Representative Copelin that the provisions linking any officer, director, trustee, or partner of any holding, intermediary, or subsidiary company to the gaming entity would be interpreted as a prohibition on such person contributing.

Senator Dardenne stated that indirect ownership interests

should remain in the prohibitions of the bill but that if the situation described by Representative Copelin is included, he would support an amendment to clarify the definition of indirect ownership.

Representative Hunter inquired about the penalty provided for in the bill.

Senator Dardenne explained that the penalty for violation of the act is $5,000, and added that any such penalty would be focused on the gambling entity who is aware of what its gambling involvement is rather than the recipient.

Representative Lancaster added that in addition to the penalty, the prohibited contribution would escheat to the state.

Representative Hunter asked if any state other than New Jersey has enacted law prohibiting campaign contributions from gaming interests. Senator Dardenne answered that no state has done so, adding that the similar law in New Jersey had been challenged in Soto vs. State of New Jersey and upheld by the New Jersey Superior Court.

Senator Dardenne pointed out that Buckley v. Valeo, 424 U.S. 1, 1976 Supreme Court, had established that because of free speech protection, campaign finance contributions are subjected to the strict test of compelling state interest. In the case of Senate Bill No. 194, he said, the compelling state interest would be the need to prevent abuse in contributions form gambling contributors, adding that such potential for such abuse has been established.

Representative Vitter noted that under Louisiana law, a 25%

ownership is generally recognized as a controlling interest and that allowing someone to circumvent the law by creating another corporation between his personal interests and the gambling entity should be protected against. Referring to the scenario described by Representative Copelin, he stated that he would support an amendment to clarify the definition of layered or indirect business interest while continuing to prevent control through layers of ownership interest.

Representative Copelin commented that if a single industry is to be singled out, it should be done fairly. He noted that he had introduced a bill that would prohibit all corporations from contributing to campaigns and allow only contributions from natural persons. He asked Senator Dardenne if he could support such a concept.

Senator Dardenne responded that he would oppose the bill since it is an appropriate exercise in the campaign process for political action committees who represent people and for corporations to be able to give to campaigns. He noted further that since the inception of legalized gaming in the state, the question has been debated whether the industry is different from other businesses in that its success is based on the weakest people's desire to take risks and lose money and that it was created and is regulated by the legislature.

Representative Lancaster added that if Representative Copelin's bill were enacted and corporations were prohibited from contributing, only wealthy candidates would have any chance of being elected.

Senator Dardenne commented that differentiation could also be made on the grounds that the Louisiana Constitution considers gambling to be an institution that the state wants to

suppress.

Representative Montgomery stated that a lawmaker's ability to be influenced or bought is wrong regardless of who is wielding the influence. He asked why the liquor industry and others that are frowned on by some should not also be prohibited from involvement in campaigns.

Senator Dardenne answered that a compelling state interest in suppressing the liquor or other regulated industries could probably not be proved.

Representative Copelin announced his intention to withdraw his support for making any clarifications in the bill and instead support reporting it out of committee in its current version.

Representative Vitter proposed an amendment which would remove the contribution prohibition on any person or entity of which the persons listed in the bill is an officer, director, trustee, or partner, or any other officer, director, trustee, or partner, stating that such prohibition was unintended.

Representative Winston supported the amendment, pointing out that all provisions intended by the author should be included in the committee process before a bill is passed on for debate by the House.

Representative Vitter offered a motion that the amendment be adopted, to which Representative Copelin objected, whereupon the secretary called the roll. The amendment was adopted by a 7-4 vote with Representatives Bruneau, Dorsey, Lancaster, Montgomery, Scalise, Vitter, and Winston voting yea and Representatives Copelin, Green, Hunter, and

Willard-Lewis voting nay.

Representative Lancaster offered an amendment to provide for an effective date of July 1, 1996, and made a motion that such amendment be adopted. There being no objection, the amendment was adopted by a vote of 11-0 with Representatives Bruneau, Copelin, Dorsey, Green, Hunter, Lancaster, Montgomery, Scalise, Vitter, Willard-Lewis, and Winston voting yea.

Representative Bruneau inquired if Senate Bill No. 194 would preclude his contracting with the New Orleans Fairgrounds to provide space and catering for fundraisers.

Senator Dardenne stated that it would not, as long as those services are paid for and not considered an in-kind contribution.

Representative Lancaster offered a technical amendment and moved that it be adopted. There was no objection to the motion, and with Representatives Bruneau, Copelin, Dorsey, Green, Hunter, Lancaster, Montgomery, Scalise, Vitter, Willard-Lewis, and Winston voting yea, the technical amendment was adopted by an 11-0 vote.

Representative Lancaster inquired what effect the registered lobbyist provision would have on a registered lobbyist who is a member of a law firm relative to his partners.

Senator Dardenne responded that it is his understanding that the specific registered lobbyist could not contribute but that he does not believe that his partners would be so prohibited. Senator Dardenne noted that the Senate had amended the bill to add the provision and that he would prefer the bill be more

narrowly drawn so as to avoid constitutional challenge. He stated that current law prohibits one person or entity from contributing to another person or entity for the purpose of making a third-party contribution.

Representative Copelin asked if a law firm representing a casino could contribute.

Senator Dardenne answered that there is no prohibition in Senate Bill No. 194 to prevent such a transaction or similar transactions by service providers and vendors not peculiar to gaming.

Representative Copelin commented that the intent to close loopholes in the law is inconsistent.

Senator Dardenne responded that while arriving at a definition of gambling interests is very difficult, he would rather attempt to address the situation with a narrowly tailored bill than take no action.

Representative Copelin commented further that a narrowly tailored prohibition would instead apply only to those individuals who are licensed by the state police for gaming.

Senator Dardenne agreed that such prohibition would indeed be more narrow than the provisions of Senate Bill No. 194 but added that such prohibition is not enough.

Representative Bruneau stated that he disagreed with both views since all bars and restaurants with video poker machines are licensed by state police.

Representative Bruneau stated that while he does not oppose

prohibiting a registered lobbyist representing a gaming interest from making a direct or indirect contribution on behalf of his employer, he opposes such provision with respect to lobbyists representing multiple interests. He noted that many lobbyists are in such a situation and would be adversely affected by the bill.

Senator Dardenne agreed that because current law disallows third-party contributions, the expansion could be removed from the bill. He noted that any such contributions would be reported and that the law must work within the confines of the constitution to be effective at all.

Representative Bruneau proposed an amendment to remove the prohibition on any registered lobbyist who represents the previously referenced gaming entities from making campaign contributions and offered a motion that such amendment be adopted. There was no objection, and with Representatives Bruneau, Copelin, Dorsey, Green, Hunter, Lancaster, Montgomery, Scalise, Vitter, Willard-Lewis, and Winston voting yea, the amendment was adopted by an 11-0 vote.

Representative Scalise asked where a list of all prohibited contributors would be available for use by candidates. Senator Dardenne answered while that the Riverboat Gaming Commission and other regulators could provide such lists, information on everyone who has a 10% interest in gambling interests might not be available; he added that for this reason the punitive provisions are geared toward the giver rather than the recipient.

Representative Copelin offered a motion that the bill be reported with amendments to which there was no objection.

Representatives Bruneau, Copelin, Dorsey, Green, Hunter, Lancaster, Rousselle, Scalise, Vitter, Willard-Lewis, and Winston voted in favor of the motion, and Senate Bill No. 194 was reported with amendments by an 11-0 vote.

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